IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

C O R A M

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT PETITION NO.10343 OF 2009 &
M.P.NO.1 OF 2011

Mrs.K.Subbulakshmi
Wife of V.K.K.Krishnamoorthy
Rep. By her son & Power Agent
Mr.K.Kalyanaram ...Petitioner

vs.

1. The Secretary to the Government,
   Revenue Department,
   Government of Tamilnadu,
   Chief Secretariat,
   Chennai-600 009.

2. The Sub Registrar,
   Salem, Salem District.

3. Nachiappa & Co.,
   A Partnership Firm,
   No.15, Vidyalaya Road,
   Near Ramakrishna Park, Salem-636 007.

4. M/s.Himadri Enterprises Private Limited,
   having registered office at
   Mangala Vihar, 7/1, Patel Colony
   Jamnagar 361 008, Gujarat.

5. Tahsildar,
   Salem, Salem District.

...Respondents

(R5 impleaded as per order dated 06.12.2012 by NPVJ in M.P.No.1 of 2012 in W.P.No.10343 of 2009)

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the first Respondents herein to take action against the 3rd and 4th Respondents in respect of the property measuring an extent of 5.25 acres comprised in survey No.65, 66 and 47/2 of Meyyanur

Village, Salem Taluk, Salem and District in terms of G.O.Ms.No.1711 Revenue Department dated 12.07.1980.

For Petitioner : Mr.Silambanan, senior counsel for M/s.K.Elangoo
For Respondents : Mr.G.K.Muthukumar, Spl. G.P. for R1 & R5
Mr.S.Raghunathan for R3 & R4
Mr.T.M.Pappiah, Spl.G.P. for R2

ORDER

The third Respondent is a partnership firm (the Partnership Firm), whose lands were conveyed to the fourth Respondent on 03.08.2007. The Partnership Firm was reconstituted from time to time. According to the Petitioner, when the Partnership Firm was reconstituted by Partnership Deed dated 01.01.1993, a limited company called V.K.K.Hotels Pvt.Ltd. had a 30% share in the profits and losses of the Partnership Firm, and the Petitioner held 50% of the paid-up share capital of the said company. By a Partnership Deed dated 01.04.1994, the Partnership Firm was unlawfully reconstituted and V.K.K. Hotels Private Limited was shown as having retired from the Partnership Firm with effect from 31.03.1994. The sale of the lands took place thereafter at a throwaway price in order to defraud the Petitioner of her right in the property. In these facts and circumstances, the Petitioner has filed this writ petition alleging that the said sale violates exemption conditions under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976 (the TN Urban Land Ceiling Act) and, on that basis, the Petitioner prays for a Writ of Mandamus to direct the first Respondent to take action against the third and fourth Respondents.

2. I heard the learned senior counsel, Mr.Silambanan, on behalf of the Petitioner; Mr.G.K.Muthukumar, the learned Special Government Pleader for Respondents 1 and 5; Mr.T.M.Pappaiah, the learned Special Government Pleader for the second Respondent; and Mr.S.Raghunathan, the learned counsel for Respondent 4.

3. The learned senior counsel for the Petitioner submitted that the lands in question were the subject matter of an exemption order in G.O.Ms.No.1711, Revenue Department, dated 12.07.1980, which prohibited the transfer of the lands by way of sale, gift, mortgage, lease or otherwise. The only exception as regards the said prohibition on alienation was in respect of mortgages in favour of a lender. Therefore, the sale of the lands by the Partnership Firm to the fourth Respondent was

clearly in violation of the exemption conditions. The next submission of the learned senior counsel was that the Petitioner had approached this Court earlier upon coming to know that the Partnership Firm was proposing to alienate the property. By order dated 25.04.2007, in W.P.No.15244 of 2007, this Court directed the second Respondent herein to consider the objections dated 19.04.2007 of the Petitioner in accordance with the provisions of law, including the Registration Act, 1908, if any document is presented for registration in respect of the property in dispute. In spite of the said order dated 25.04.2007, he submits that the property in question was alienated in favour of the fourth Respondent. As regards the locus standi of the Petitioner, the learned senior counsel referred to and relied upon the judgment of the Hon'ble Supreme Court in Chairman, Railway Board & Others v. Mrs.Chandrima Das & Others (2000) 2 SCC 465 (Chandrima Das) wherein the Hon'ble Supreme Court upheld the right of a lawyer to claim compensation on behalf of the rape victim. In that context, the Hon'ble Supreme Court held that public law remedies are wide enough to encompass not only infringement of fundamental rights but also proceedings for the enforcement of statutory duties. On this basis, he submits that the Petitioner is entitled to maintain the writ petition to enforce statutory obligations under the TN Urban Land Ceiling Act, as saved by Section 3 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (the Repeal Act).

4. In response to the aforesaid submissions, Mr.Raghunathan pointed out that the Partnership Firm was reconstituted from time to time. Mr.Raghunathan referred to the financial statements for the financial year ended on 31.03.1991 and pointed out that the Director's Report reflects an investment of Rs.45 lakhs by V.K.K. Hotels Pvt. Ltd. in the Partnership Firm. By drawing reference to the financial statement for the financial year ended on 31.03.1995, he pointed out that the aforesaid investment is not reflected therein on account of the fact that V.K.K.Hotels Private Limited retired from the Partnership Firm with effect from 31.03.1994. With regard to the order in W.P.No.15244 of 2007, he pointed out that it is clear from the affidavit filed in support of the present writ petition and, in particular, paragraph-12 thereof that the said order was communicated to the Respondents therein only in April 2009 whereas the property in question had been alienated earlier. On the question of locus standi, Mr.Raghunathan pointed out that the representation which preceded the writ petition refers to civil consequences in case the representation is not acted upon. In other words, he contends that this is a disguised attempt to redress private grievances against the other partners of the Partnership Firm and not a genuine resort to a public law remedy.

5. As regards the Repeal Act, he submits that as per Section 3(2) thereof, the critical activity is the taking of possession and that if possession is not taken the proceedings would abate. In the present case, he submits that the admitted position is that the possession was not taken.

6. The Special Government Pleader, Mr.Muthukumar, submits that the Respondents 1 and 5 are ready and willing to conduct an enquiry as to whether there was a violation of exemption conditions and whether any action is required in this connection if so directed by this court.

7. I considered the submissions of the learned senior counsel/counsel for the respective parties and examined the materials on record.

8. The first question that should be decided is whether the Petitioner herein has the locus standi to maintain the writ petition. In this connection, it is evident from the affidavit filed in support of the writ petition that the present writ petition is not framed as a public interest litigation. Moreover, upon perusal of the affidavit, it is clear that the primary grievance of the Petitioner is that she held 50% of the issued share capital of V.K.K.Hotels Private Limited, which, in turn, was a partner in the Partnership Firm. Without the consent of the Petitioner, the Partnership Deed dated 01.04.1994 was executed whereby V.K.K.Hotels Private Limited was shown as having retired from the Partnership with effect from 31.03.1994. According to the Petitioner, the said reconstitution of the Partnership Firm on 01.4.1994 was effected with a view to defeating the Petitioner's claim over the property of the Partnership Firm.

9. In fact, the representation dated 14.02.2009 of the Petitioner also refers to the fact that the property was undervalued and sold for a throw away price to the fourth Respondent. The learned senior counsel for the Petitioner placed considerable reliance on the judgment of the Hon'ble Supreme Court in Chandrima Das so as to contend that public law remedies are very wide in scope and that the Petitioner has locus standi to prosecute the present petition. While there is no doubt that public law remedies are extremely wide and the concept of locus standi has undergone considerable dilution especially in the context of public interest litigation; nonetheless, it should be borne in mind that public law remedies are discretionary. In the present case, it is clear from the affidavit that the Petitioner was aware of the fact that the Partnership Firm was reconstituted in the year 1994 and that V.K.K.Hotels Private Limited was shown as a retired partner with effect from 31.03.1994. It is also clear that the Petitioner was aware about

the alienation of the property on 03.08.2007. In spite of the same, there is no indication in the affidavit that the Petitioner instituted private law proceedings as regards the reconstitution of the Partnership Firm on 01.04.1994 or the sale of the property on 03.08.2007. The alleged rights of the Petitioner flow from the 50% shareholding in V.K.K. Hotels Pvt. Ltd., which, in turn, is said to have held 30% of the profits and losses of the Partnership Firm. In my view, the Petitioner is not entitled to a discretionary public law remedy because this is an endeavour to disguise a private dispute as a public law grievance. In the said facts and circumstances, I am not inclined to exercise discretionary jurisdiction at the instance of the Petitioner.

10. With regard to the Repeal Act and the implications thereof on the exemption order, the learned senior counsel pointed out that the exemption orders are saved by Section 3 (1) thereof whereas the learned counsel for the fourth Respondent relied upon Section 3(2) (a). In light of the conclusion arrived at in the preceding paragraph as regards the locus standi of the Petitioner to seek relief in this case, it is not necessary to enter definitive conclusions as regards the right of the Government to initiate action in terms of the TN Urban Land Ceiling Act. Nonetheless, it is pertinent to refer to the following judgments wherein this Court concluded that the Repeal Act does not save Section 21 of the TN Urban Land Ceiling Act and, therefore, action cannot be initiated for breach of the exemption condition after the Repeal Act came into force:

(i) M/s.Suri Industries, represented by its Partner, H.S. Suri v. State of Tamil Nadu (2010) 8 MLJ 1048

(ii) Mohammed Ashref Noor v. Secretary to Government 2009 SCC Online Mad 2545

(iii) Simpson and General Finance Company Ltd. v. State of Tamil Nadu 2006 (5) CTC 656

11. Accordingly, I conclude that the present writ petition is liable to be dismissed.

12. In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
   Revenue Department,
   Government of Tamilnadu,
   Chief Secretariat,
   Chennai-600 009.

2. The Sub Registrar,
   Salem, Salem District.

3. Tahsildar,
   Salem, Salem District.8.

+1 cc to Mr. S. Raghunathan, Advocate vide SR No.39432
+1 cc to Government Pleader, vide SR No.39822
+1cc to M/s.Profexs Associates, Advocate, SR.No.39650

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KJ(CO)
NS(29/12/2020)
KKV/19/01/2021